

VETERINARY MEDICAL BOARD
INITIAL STATEMENT OF REASONS

Hearing Date: October 18, 2006

Subject Matter of Regulations: Clarify Authority to Administer Controlled Substances

Section(s) Affected: 2036 and 2036.5

Specific Purpose of each adoption, amendment, or repeal

The specific purpose of this regulatory proposal is to adopt new regulations relating to the authority of veterinarians to delegate the administration of controlled substance drugs by registered veterinary technicians (RVT) and lay staff (unregistered assistants).

Section 2036

Adopt Section 2036 (c) and (c)(1)

This proposed regulation would expand the scope of practice for RVTs to allow RVTs to administer controlled substances under indirect supervision.

Section 2036.5

Amend Section 2036.5 (b)

This amendment expands the scope of practice for unregistered assistants to allow them to administer controlled substances under direct supervision.

Problem Addressed

Business and Professions Code section 4808 gives the Veterinary Medical Board (Board) the authority to adopt regulations necessary to carry out the provisions of the Business and Professions Code relating to the Board.

Business and Professions Code section 4836 specifies that the Board shall adopt regulations establishing the job tasks and appropriate level of supervision required for those tasks that may be performed only by a registered veterinary technician.

Traditionally, the Board has believed that the authority for the administration of any drug was governed by existing regulations allowing California licensed veterinarians to delegate the administration of controlled substances to RVTs or unregistered assistants at either direct or indirect supervision.

The proposed change is based on new information in an opinion prepared by the Board's legal counsel outlining overly restrict parameters of the Federal Controlled Substances Act and the Uniform Controlled Substances Acts relative to the delegation of administration of controlled substances.

The Board supports restriction of the administration of controlled substances due to the high potential for harm with and/or diversion of controlled substance drugs and believes that it is essential to restrict their use and define the specific levels of supervision for times when the supervising veterinarian is not present. However, the Board believes that the Federal standard of immediate supervision is too restrictive and that indirect supervision for RVTs and direct supervision for unregistered assistants is a sufficient safeguard for administration of controlled substances, since the ultimate responsibility for the drugs falls upon the supervisor, a California licensed veterinarian.

Indirect supervision means that the veterinarian supervisor is not physically present at the location where the drugs are being administered but the veterinarian has previously examined the animal and has given either written or oral instructions (direct orders) for treatment of the animal patient.

Indirect supervision is sufficient for RVTs because they are educated and tested by the State in the calculation of drug dosages, pharmacology, controlled drug handling and regulations. They also undergo State and Federal background checks before being registered in California.

Direct supervision means that the animal has been examined previously by the veterinarian and that the veterinarian or RVT is physically present and easily available at the location where the drugs are being administered.

Direct supervision is required for unregistered assistants because they are not tested (known) by the state; therefore, the state cannot assure the public that they have the skills necessary to perform the administration of controlled substances without direct supervision.

With the increased awareness of the need for pain control in veterinary medicine over the past 25 years, there is a greatly increased and growing use of controlled drugs in veterinary medicine. Allowing RVTs under indirect supervision and lay personnel under direct supervision to administer controlled drugs provides the animal patient with the pain control they need while protecting both patient and public safety.

The Board's priority in proposing these changes is ensuring public and animal safety while providing animals with access to much needed pain medication. Evidence gathered at a public hearing in April 2006 regarding other changes to the RVT job tasks support the need for a more expansive authority for veterinarians to delegate the task of administering controlled substances consistent with the Board's mandate to set the appropriate level of supervision in Section 4836.

Factual Basis/Rationale

In a recent Department of Consumer Affairs legal opinion dated April 19, 2006 and a subsequent legal memo to the Veterinary Medical Board (Board), dated June 29, 2006,

it was revealed that the Federal Controlled Substances Act restricts the administration of all controlled substances to licensed veterinarians and limits delegation to support staff to only immediate supervision (in the physical presence of the veterinarian).

Testimony received during a regulatory public hearing in April 2006 regarding delegation of other veterinary tasks illustrated that the current standard of practice in California is to delegate the administration of controlled substances, especially pain medication, to both RVTs and unregistered assistants under indirect supervision.

The laws in the FCSA have been obscured for many years and have been applied, for the most part, to human medicine only. The Board was just recently made aware of the laws and their impact through the legal opinion. Adhering to the strict interpretation of laws in the FCSA and the restriction for delegation under immediate supervision only, would create an emergency staff shortage situation in California leading to a severe lack of available staff to administer controlled substances that would cause increased pain and endanger the majority of animals currently under care leading, in many cases, to possible death.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):

- Department of Consumer Affairs, Legal Opinion, Dated April 19, 2006
- Department of Consumer Affairs, Legal Office, Memo to the Board dated, June 16, 2006.
- Federal and State Controlled Substances Acts
- Uniform Controlled Substances Act

Business Impact

This regulation may have a beneficial, adverse or no significant economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

Based on information submitted to the Board from the profession and the public at a public hearing for another proposed regulatory change in April 2006, the Board determined that it is critical to the profession in California to affirm via regulation the authority of the licensed veterinarian to delegate to RVTs the administration of controlled substances under indirect supervision and to lay personnel under direct supervision rather than the more restrictive Federal standard of "immediate" or in the physical presence of the licensee.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Status Quo: no change is likely to result in animal suffering and possible death due to a lack of staff to provide basic pain relief medication during the evening and early morning hours as well as on the weekends.